

EXHIBIT 6

**WATERWALK GROUND LEASE NO.**

THIS GROUND LEASE, made and entered into at Wichita, Kansas, as of the  
\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (“Commencement Date”).

BY AND BETWEEN

City of Wichita, Kansas,  
a Kansas municipality,

“Landlord”

AND

WaterWalk LLC,  
a Kansas limited liability company,

“Tenant”

W I T N E S S E T H: That;

WHEREAS, Landlord is the owner of the Premises described herein; and

WHEREAS, Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease;

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, the parties agree as follows:

**ARTICLE I**

**Basic Terms and Definitions**

The following basic terms and definitions shall be applicable to the various provisions of this Lease:

Expiration Date. Unless earlier terminated pursuant to the terms hereof, this Lease shall expire at the end of the Term (defined below).

Minimum Rent. The Minimum Rent is set forth in Section 5.01 hereof.

Notices. The addresses for any notices required or permitted hereunder shall be as follows:

- |    |                 |  |
|----|-----------------|--|
| a. | If to Landlord: | c/o City Clerk<br>455 N. Main, 13 <sup>th</sup> Floor<br>Wichita, Kansas 67202 |
| b. | If to Tenant:   | _____<br>_____<br>_____  |

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Premises. The land described on Exhibit A attached hereto and incorporated herein by reference.

Term. The Term of the Lease shall be ninety-nine (99) years.

## **ARTICLE II**

### **Granting Clause**

Section 2.01. Demise. In consideration of the obligation of Tenant to pay all forms of rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises for the Term, all upon the terms and conditions set forth in this Lease, including the restriction that no existing building, nor any building which is constructed or placed upon the Premises, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling on the Premises.

Section 2.02. Demolition by Landlord. Landlord agrees to complete the demolition of existing improvements on the Premises. Such demolition shall be done in a workmanlike manner in compliance with all applicable laws, rules and regulations, and in such a manner as to cause no disruption to or interference with Tenant's construction activities on the Premises or on adjacent property. Such demolition shall be completed on or before the Commencement Date with the site restored to a level grade, compacted, free of all debris, and in a condition acceptable to Tenant.

Section 2.03. Possession of Premises. Landlord shall deliver, and Tenant shall accept, possession of the Premises in the condition required in Section 2.02 above on the Commencement Date. Landlord represents and warrants that Tenant's possession of the Premises shall be free of any claim of possessory rights by any person or entity except that of Landlord, Tenant or as created by any Approved Title Exception (defined below). Landlord shall have the right to access the property to maintain the adjacent Public Improvements after due notice to the Tenant, provided such maintenance shall not interfere with the conduct of Tenant's business and provided that Landlord shall fully restore Tenant's Premises.

## **ARTICLE III**

### **Construction of Improvements**

Tenant shall construct one or more buildings and related improvements on the Premises ("Tenant Improvements"). Tenant shall not construct on the Premises (i) any structures that are utilized as a "fast food" restaurant that includes a "drive-through" window, (ii) car lots for the sale and/or storage of new or used automobiles, (iii) massage parlors, (iv) escort services, (v) adult cinema, film, video, or toy stores, or (vi) any multi-game, casino-style gambling. Any such

construction shall be at Tenant's sole cost and expense, and shall be in accordance with all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements. Tenant shall have the right to demolish, rebuild, remodel, or alter such improvements at any time during the Term of this Lease in Tenant's sole discretion, or to build additional improvements on the Premises, as long as such activities are carried out in compliance with all applicable laws, ordinances, and regulations. Until this Lease shall terminate as provided herein, Tenant shall own in fee simple all such improvements so constructed by Tenant and shall be entitled to all benefits of such ownership, including, without limitation, depreciation under applicable tax laws. Upon termination of this Lease for any reason, fee simple title to all such permanent improvements and fixtures, but not to trade fixtures and personal property, shall immediately vest in Landlord, and Tenant shall execute such deeds or other instruments reasonably required by Landlord to evidence such ownership of record.

## **ARTICLE IV**

### **Recordable Documents**

Section 4.01. Short Form Lease. Upon request of either party, the other shall execute a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Lease, except for the rental payable hereunder or other similar proprietary matters.

Section 4.02. Recordable Documents. Tenant shall have the right to execute and record against its interest in the Premises one or more documents containing covenants, conditions, restrictions, access agreements, use, maintenance, development or architectural control terms, terms related to any owners or occupants association, and any other document or agreement in Tenant's sole discretion, provided that any such document expires as of the Expiration Date hereof, and that any such document cannot permit any property use or any discriminatory term that is prohibited by the Development Agreement (hereafter each a "Recordable Document"). Landlord consents and agrees that Tenant may record any Recordable Document without obtaining Landlord's signature thereto, or other approval or consent, and hereby directs the Sedgwick County, Kansas, Register of Deeds to record any Recordable Document upon presentation to such office, provided such Recordable Document is otherwise in recordable form and the proper recording fee is submitted.

## **ARTICLE V**

### **Rent**

Section 5.01. Minimum Rent. Tenant shall pay Landlord a minimum fixed annual rent ("Minimum Rent") of One Dollar (\$1) payable in advance on the Commencement Date in one (1) installment covering the Term of this Lease.

Section 5.02. Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, the

Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of nonpayment of rent.

As Additional Annual Rent Tenant shall pay a sum equal to twenty-five percent (25%) of the Adjusted Net Cash Flow commencing with the first day the Tenant Improvements open for business. The Tenant shall calculate Adjusted Net Cash Flow for each Current Year within forty-five (45) days after the end of the Current Year (or portion thereof) and provide that calculation, and pay to the Landlord the Additional Annual Rent, within sixty (60) days after the end of the Current Year. Additional Annual Rent shall continue until this Lease expires. Adjusted Net Cash Flow is Gross Revenues less Total Expenses, less the total amount of capital expenses for furniture, fixtures, and equipment for the Tenant Improvements in excess of the aggregate amount expended from any reserve during such year.

The Tenant agrees to allow City Representative, after submission of the calculations of Additional Annual Rent for such year, to review and audit the Tenant's books and records for compliance with the Tenant's obligations hereunder. If an audit by the City reveals a material understatement of the amount due the City, then the Tenant shall pay all reasonable costs of such calculations required hereunder, the Tenant and City shall apply generally accepted accounting principles, consistently applied.

Section 5.03. Place of Payment. Minimum Rent, and all additional rent and other charges owed by Tenant to Landlord under the Lease, shall be payable by Tenant to Landlord at Landlord's Notice Address set forth in Article I above or to any other place designated by written notice delivered by Landlord to Tenant at least ten (10) days prior to the date such amount is due to Landlord.

## **ARTICLE VI**

### **Property Taxes**

Section 6.01. Taxes. Tenant shall pay as additional rent during the Term and any extensions thereof, all ad valorem taxes, and all other governmental taxes or charges that may be levied against the Premises allocable to the Term (collectively "Taxes"). If not billed directly to Tenant, Landlord shall, after receipt of any tax bill or other notice of Taxes, promptly furnish Tenant with a copy thereof. Tenant shall issue its check payable to the applicable taxing authority in the amount indicated and shall mail such check to the applicable taxing authority. If Landlord receives receipts from the taxing authority evidencing the payment thereof, Landlord will promptly mail copies of such receipts to Tenant. Taxes for the first and last years hereof shall be prorated. All personal property taxes shall be the responsibility of Tenant. Landlord shall not pass through to the Tenant or the Premises any cost for design and construction of the "Public Improvements" (as that term is defined in the Development Agreement).

Section 6.02. Payment by Landlord. If Tenant should fail to pay any Taxes required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects, pay such Taxes. Any sums so paid by Landlord shall be deemed to be additional rent owing by Tenant to Landlord and shall be due and payable upon demand as additional rent. Landlord may only step in and pay such Taxes on Tenant's behalf after Landlord has provided Tenant with written

notice thereof and a reasonable time to pay such amounts. Provided, however, that if Tenant timely protests the imposition of any Taxes and diligently pursues the contest of any such assessment, then Landlord shall forebear any such payment until the protest is resolved or the taxing authority seeks to foreclose any tax lien.

## **ARTICLE VII**

### **Condition of Premises, Mechanic's Liens, Liability Insurance**

Section 7.01. Representations or Warranties. The Landlord warrants and represents to, and agrees with, the other Party as follows:

- a. It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- b. It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby.
- c. Neither the execution and delivery of this Agreement and the other documents contemplated herein will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- d. To the best of Landlord's knowledge, other than ground water pollution, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the Premises including, without limitation, the subsurface soils and groundwater, or which have migrated to the Premises from another source, or have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the Premises by Landlord or any third -person, nor has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the Premises nor any notice that the Premises are not in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials (excluding such as may have been introduced during the Term by Tenant and any subtenants) are found on the Premises during the Term or any extension of the Term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the Premises to substantially the same condition as it was in immediately prior to such removal and remediation work. Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or

regulatory agency regarding Hazardous Materials on the Premises and provide Tenant with a copy of the same within ten (10) days of Landlord's receipt thereof. This does not waive the limitation under the Kansas Tort Claims Act.

Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials located in, on or under the Premises as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the Premises by Tenant or any subtenant thereof during the Term.

Section 7.02. Mechanics' Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of Tenant, Tenant shall discharge the lien within forty (40) days after the filing of the lien, provided, however, that for so long as Tenant posts a bond and continues to diligently contest the amounts claimed due, it shall not be obligated to discharge said lien.

Section 7.03. Insurance Covering Tenant's Work. Tenant shall not make any improvements, alterations, repairs or installations, or perform any other work to the Premises unless prior to the commencement of the work Tenant shall obtain or cause its contractors to obtain (and during the performance of the work keep in force) public liability and worker's compensation insurance to cover every contractor to be employed. The policies shall be non-cancelable without ten (10) days' prior written notice to Landlord, and such insurance shall be carried with companies reasonably satisfactory to Landlord. Prior to the commencement of the work, Tenant shall deliver duplicate originals or certificates of the insurance policies to Landlord.

## **ARTICLE VIII**

### **Repairs, Compliance, Surrender**

Section 8.01. Repairs and Maintenance by Tenant. Tenant shall make all repairs to the Premises which Tenant concludes are necessary or desirable to keep the Premises in good order and repair.

Section 8.02. Compliance with Laws. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises, and otherwise comply with all applicable laws, ordinances and governmental regulations, and recorded restrictions and covenants. During the Term Landlord may not permit any additional restrictions, covenants or any other encumbrances to be placed on any portion of the Premises without Tenant's prior written consent, which consent may be granted or withheld by Tenant in Tenant's sole discretion. Tenant shall have no responsibility for the failure of any Sub-Tenant to comply with the provisions of this Section.

Section 8.03. Surrender of Premises. Upon the Expiration Date of this Lease, Tenant shall quit and surrender the Premises together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Premises. Upon surrender, Tenant may remove its personal property and trade fixtures.

## **ARTICLE IX**

### **Services and Utilities**

Tenant covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, and garbage removal and sewer in a timely manner as they may come due during the Term.

## **ARTICLE X**

### **Mortgages on Tenant's Interest; Nondisturbance Agreements; Estoppel Certificates**

Section 10.01. Right to Encumber. Landlord hereby grants to Tenant the right to mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed on the Premises (hereinafter in this Article X, each a "Leasehold Mortgage") without obtaining Landlord's consent. Landlord hereby agrees to subordinate its fee interest in the Premises to one or more mortgagees making a Leasehold Mortgage (hereinafter in this Article X, a "Leasehold Mortgagee") provided that the proceeds of and loan secured by such Leasehold Mortgage are used for any costs associated with the development and construction of improvements by Tenant on the Premises, and further provided that such subordination of Landlord's fee interest shall only be for the Term and such Leasehold Mortgagee's rights in the fee interest upon any foreclosure shall expire at the end of the Term. Landlord agrees to sign the subordination agreement in the form attached hereto and incorporated by reference herein as Exhibit B. If during the Term a Leasehold Mortgagee forecloses on, or requires a deed in lieu of, its Leasehold Mortgage, Landlord, unless it shall timely exercise its right to cure defaults under the Leasehold Mortgage, agrees to execute and deliver upon request a deed in the form of Exhibit C attached hereto and incorporated by reference herein, the term of years actually recited in such deed to expire simultaneously with the Expiration Date of the Lease Term.

Landlord further acknowledges and agrees that Tenant may assign, sublet or otherwise convey all or a portion of Tenant's interest in the Premises and under this Lease (any such assignee, subtenant or conveyance grantee hereinafter in this Article X referred to as an "Assignee"), and that any Assignee may, without obtaining Landlord's consent, mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber such Assignee's interest in this Lease, and such Assignee's interest in the Premises and any improvements thereto (hereinafter in this Article X each an "Assignee Mortgage," each mortgagee or secured party under an Assignee Mortgage hereinafter an "Assignee Mortgagee," each Leasehold Mortgage and Assignee Mortgage a "Mortgage," each Leasehold Mortgagee and Assignee Mortgagee a "Mortgagee," and each Assignee and Mortgagee a "Lease Interest Holder"). Landlord agrees that any Mortgage or evidence thereof may be recorded against the Mortgagee's interest in the Premises in the Sedgwick County, Kansas, public real property records.

Section 10.02. Cure by Lease Interest Holder. Landlord shall give to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest in the Premises and provided Landlord with a notice address, simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant and no such notice to Tenant shall be effective unless a copy is so served upon each such Lease Interest Holder. Each Lease Interest Holder shall have the right, but not the obligation, to cure any default by Tenant hereunder, by completing such cure at any time within sixty (60) days following the expiration of the cure period otherwise applicable to Tenant, or, if said default is of a nature that it may not reasonably be cured within the applicable cure period, then if a Lease Interest Holder commences to cure during the applicable cure period, provides Landlord with notice of such commencement, and proceeds with such cure diligently and with reasonable dispatch, and Landlord shall accept performance by or at the instance of such Lease Interest Holder as if the same had been made by Tenant.

Section 10.03. Foreclosure of Mortgage. A Leasehold Mortgagee may become the legal owner and holder of the interest of Tenant under this Lease, including, without limitation, the interest of Tenant in all improvements erected by Tenant on the Premises, by foreclosure or by an assignment of this Lease in lieu of foreclosure, without Landlord's consent. In such event, such Leasehold Mortgagee shall have the right thereafter to assign this Lease without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease. Additionally, any Assignee Mortgagee may become the legal owner and holder of the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, by foreclosure or by an assignment of such Assignee's interest in lieu of foreclosure, without Landlord's consent. In such event, such Assignee Mortgagee shall have the right thereafter to assign the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease.

Section 10.04. Nondisturbance Agreement Regarding Ground Lease Mortgagee. In the event of any early termination by Landlord of this Lease due to a Tenant default prior to the ordinary expiration of the Term, Landlord shall (A) within five (5) days after such Expiration Date provide to any Leasehold Mortgagee notice of such early termination along with a statement of any and all sums that would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord, and (B) within twenty (20) days after such termination date provide notice of such early termination to any other Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address. Said Leasehold Mortgagee shall then have an option to obtain a new lease upon the same terms and conditions set forth in this Lease. This option must be exercised by written notice to Landlord given within thirty (30) days from the date said Leasehold Mortgagee receives the Landlord's notice and statement. The new lease shall require said Leasehold Mortgagee to cure all monetary defaults of Tenant under this Lease. Any non-monetary default of Tenant shall be waived by Landlord, provided the Leasehold Mortgagee proceeds with reasonable promptness to obtain possession, continues diligently to attempt to cure the default, and satisfies Tenant's other obligations under this Lease. Within twenty (20) days of entering into such a new lease, Landlord shall provide written notice of such new lease to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address.

Section 10.05. Nondisturbance Agreement Regarding Assignee or Assignee Mortgagee. Conditional upon the terms of Section 10.06 below, Landlord grants the following nondisturbance



rights to each Assignee and each Assignee Mortgagee. So long as neither an Assignee's possessory right in and to the Premises nor such lease, sublease, assignment or other instrument of conveyance (hereinafter in this Article X each an "Assignment") creating such Assignee's right has been terminated due to a breach or default of the Assignment by such Assignee, Landlord covenants to not diminish, disturb or interfere with those possessory rights or such other rights of such Assignee (and any Assignee Mortgagee or other successor-in-interest of such Assignee) pursuant to such Assignment, except as may be permitted under the terms of such Assignment.

Section 10.06. Conditions Precedent to Landlord Nondisturbance Obligation. Landlord's obligations and covenants pursuant to Section 10.05 above are expressly conditional and contingent upon the benefiting Assignee or Assignee Mortgagee accepting and agreeing to the following terms:

a. Attornment. Such Assignee/Assignee Mortgagee agrees that in the event of the termination, cancellation or expiration of its respective Assignment for any reason whatsoever, such Assignee's/Assignee Mortgagee's interest in and to the Premises shall be subject to this Lease, such Assignee/Assignee Mortgagee will attorn to Landlord for the unexpired term of the Assignment, subject to all of the terms and conditions of the Assignment, except as hereinafter provided, and such attornment shall be effective and self-operative without the execution of any further instrument on the part of Landlord or such Assignee/Assignee Mortgagee, and Landlord will accept such attornment. Upon request of either Landlord or such Assignee/Assignee Mortgagee, the other party shall execute and deliver a new assignment containing the same terms and conditions as contained in the Assignment (including all right of renewal and extension), for the remaining term thereof, except that Landlord shall be permitted to make any necessary modification to provide that any Landlord obligations arising thereafter shall be limited to the extent that adequate funds may be available for the performance thereof from rents received on the Premises. Landlord shall not be: (i) responsible or liable for any monetary damages as a result of, or obligated to cure, any defaults by the lessor, sublessor, assignor or other grantor to Assignee under Assignee's respective Assignment (hereinafter in this Article X each an "Assignor") under the Assignment provided that the foregoing shall not be deemed to relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises; (ii) subject to claims, defenses or offsets under the Assignment or against Assignor which arose or existed prior to the time Landlord obtains possession of Assignor's interest in the Premises provided that the foregoing shall not be deemed to (A) relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises, or (B) modify or waive any rights of self-help, set-off, abatement or termination expressly provided in the Assignment; (iii) bound by any rent paid more than thirty (30) days in advance; (iv) liable for the return of any security deposit paid to any prior party, including Assignor, unless Landlord has actually received the same; or (v) bound by any amendment or modification of the Assignment made without its prior written consent (Landlord agrees not to unreasonably condition, withhold or delay its consent to any proposed amendment or

modification which does not materially and adversely affect Landlord's interest). Nothing in this Section 10.06 shall be deemed a waiver of any rights or remedies that such Assignee/Assignee Mortgagee may possess or claim personally against Assignor for any defaults or acts of Assignor.

b. Right To Cure Landlord's Default. Notwithstanding any provisions of the Assignment to the contrary, no notice of cancellation of the Assignment by such Assignee/Assignee Mortgagee shall be effective unless Landlord shall have first received notice of the default giving rise to such cancellation and shall have failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to Landlord, at Landlord's notice address set forth in this Lease, copies of any statement, notice, claim or demand given or made by such Assignee/Assignee Mortgagee to Assignor, in all cases by the same method as the statement, notice, claim or demand was given or made to Assignor.

Landlord may request an Assignee or Assignee Mortgagee to execute a separate agreement specifically accepting or rejecting the terms of this Section 10.06.a. and 10.06.b., and if such Assignee or Assignee Mortgagee does not execute and return such agreement accepting such terms to Landlord within thirty (30) days of delivery to such Assignee/Assignee Mortgagee, such failure shall be deemed conclusive evidence that Landlord's obligations and covenants pursuant to Section 10.05 above shall not run to the benefit of such Assignee/Assignee Mortgagee.

Section 10.07. Estoppel Certificates. Landlord agrees that the City Representative shall execute and deliver to Tenant, any Assignee and any Mortgagee an estoppel certificate in the form attached hereto as Exhibit D. If Tenant, any Assignee or any Mortgagee delivers such a certificate to the City Representative for execution and the City Representative fails to complete (modified as necessary to make it true and correct), execute and return such certificate within twenty (20) days of the City Representative's receipt of the same, the statements made in the certificate provided to the City Representative shall be deemed true and Landlord agrees that such statements may be relied upon by such requesting party and that party's respective successors, assigns, lenders and title insurers. Additionally, Landlord agrees that in response to an open records request from Tenant, any Assignee or any Mortgagee for information related to this Lease, Landlord will respond as required under all applicable laws at such time, and in the event that the open records laws are repealed, Landlord agrees to provide such requested information anyway as is required by the Kansas Open Records Act in effect as of July 1, 2006.

## **ARTICLE XI**

### **Destruction and Insurance**

Section 11.01. Insurance. Tenant agrees, at Tenant's cost and expense, to obtain and keep in force and effect during the life of this Lease and any extensions thereof, in the names of Landlord and Tenant, general liability insurance against any and all claims for personal injury or property damage occurring in or upon the Premises during the Term of this Lease. Such insurance shall be maintained with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) for injuries to any number of persons in any one accident or occurrence; and, Five Hundred Thousand Dollars (\$500,000) for damage to property in any one accident or occurrence. Tenant shall furnish to Landlord at Landlord's written request reasonable evidence of Tenant's compliance with the

provisions of this paragraph, such as certificates of insurance. Tenant further agrees that Tenant shall be solely responsible for procuring and maintaining casualty insurance on the improvements constructed by Tenant on the Premises.

Section 11.02. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees to the extent such loss is covered by a policy of insurance. Landlord and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers, in amounts and to the extent Tenant deems reasonable and necessary.

## **ARTICLE XII**

### **Condemnation**

Section 12.01. Termination of Lease. If Landlord's fee simple title to the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein the "Taking"), then this Lease shall terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Premises as to render the remainder thereof substantially unusable for the purposes for which the Premises were leased, then Tenant shall have the right to terminate this Lease on thirty (30) days' notice to the other given within ninety (90) days before the estimated date of possession being given to the condemning authority. In the event of a partial taking and the remainder of the Premises are usable, rent shall be reduced in proportion to the amount of square footage condemned.

Section 12.02. Compensation. All compensation awarded or paid upon a total or partial Taking of the Premises shall be distributed pro rata to Landlord for the value of the real estate and to Tenant for the Tenant Improvements.

Section 12.03. Taking for Temporary Use. If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

## ARTICLE XIII

### **Indemnity and Liability**

#### Section 13.01. Indemnity.

a. As used in Article XIII, "Claims" means any claims, suits, proceedings, actions, causes of action, mechanics or materialman's liens, responsibility, liability, demands, judgments, and executions.

b. Tenant hereby indemnifies and agrees to save harmless Landlord from and against all Claims, which (i) arise from any work performed by Tenant on the Premises; (ii) arise from or are in connection with Tenant's possession, use, occupation, management, repair, maintenance or control of the Premises or any portion thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant's Agents; (iv) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (v) result from injury to person or property or loss of life sustained in or about the Premises during the Term except to the extent arising out of any negligence or willful misconduct of Landlord.

c. Landlord hereby indemnifies and agrees to save Tenant harmless from and against all claims which (i) arise from or are in connection with any act or omission of Landlord; (ii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Landlord; or (iii) result from injury to person or property or loss of life sustained in or about the Premises to the extent arising out of any negligence or willful misconduct of Landlord. Provided, however, that in any case where the claims are of a nature such that the Landlord's liability would be limited by limitations or immunities under the Kansas Tort Claims Act if the claims were brought directly against Landlord, Landlord's liability under this subsection c. shall be subject to the same limitations and immunities.

d. Indemnitor shall defend any Claims against Indemnitee with respect to the foregoing at Indemnitor's sole cost and with counsel reasonably satisfactory to Indemnitee. Indemnitor shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Indemnitee in connection with any Claims.

e. This Section 13.01 shall expressly survive the termination or expiration of this Lease.

#### Section 13.02. Liability Insurance.

a. Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises as set forth in Section 11.01 hereof. Landlord, and any designee of Landlord shall be named as additional insureds. The liability insurance policy shall protect Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenance of the

Premises as required in Section 11.01, or which arises from any of the Claims described in Section 13.01 against which Tenant is required to indemnify Landlord.

b. The policy shall be written by an insurance company reasonably satisfactory to Landlord with coverage limits reasonably satisfactory to Landlord.

Section 13.03. Inability to Perform.

a. If Landlord fails to perform any of its obligations under this Lease as a result of Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act or war; fire or other casualty; delays caused by Tenant; and causes beyond the reasonable control of Landlord (a "Force Majeure"), Landlord shall not be liable for loss or damage for the failure, and Tenant shall not be released from any of its obligations under this Lease.

b. If Landlord is delayed or prevented from performing any of its obligations as a result of a Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

**ARTICLE XIV**

**Covenant of Quiet Enjoyment**

Landlord covenants, represents and warrants that it has good and marketable fee simple title to the Premises free and clear of all liens, assessments, leases, taxes and other encumbrances except those title exceptions specifically approved by Tenant in writing ("Approved Title Exceptions"). Landlord covenants that Landlord has the authority to lease the Premises to Tenant, and if Tenant pays the rent and all other charges provided for in this Lease, performs all of its obligations provided for under this Lease, and observes all of the other provisions of this Lease, Tenant shall peaceably and quietly enjoy the Premises in accordance with the terms of this Lease without any interruption or disturbance from Landlord.

**ARTICLE XV**

**Default**

Section 15.01. Events of Default. Each of the following events shall be a default hereunder by Tenant and a breach of this Lease:

a. If Tenant shall be dissolved, or shall make an assignment for the benefit of creditors;

b. If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;

c. If Tenant shall fail to pay Landlord any Minimum Rent or additional rent within thirty (30) days after receipt of written notice from Landlord that the same are due and payable; or

d. If Tenant shall breach or fail to perform any of the agreements, terms, covenants, or conditions hereof on Tenant's part to be performed other than the payment of Minimum Rent or additional rent, and such nonperformance shall continue for a period of thirty (30) days after receipt of written notice thereof by Landlord to Tenant (provided, however, that Tenant shall not be in default hereunder if Tenant shall, within such thirty (30) day cure period, commence and at all times thereafter diligently pursue all practicable efforts to cure the default).

If any such default shall occur and shall not be cured within the applicable cure period, if any, Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Lease and the Term hereof, as well as all of the right, title, and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the Term. Upon the Expiration Date the Lease shall be deemed null, void and of no force and effect, and both parties shall be relieved of any further obligation to the other under the terms of the Lease. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.02. Landlord's Right to Cure. Upon any uncured default, Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by Landlord shall be deemed to be additional rent hereunder payable by Tenant and collectible as such by Landlord with the next succeeding monthly installment of rent. Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied, but neither any such expenditure, nor any such performance, by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.03. Landlord Default; Tenant Remedies. If Landlord fails to pay any amount due under the Lease, or shall breach or fail to perform any other agreement, term, covenant or condition of the Lease, and such failure shall continue for a period of thirty (30) days after Landlord's receipt of written notice from Tenant of such failure, Landlord shall be in default and in breach of this Lease. In the event of a Landlord default, Tenant shall have the right, but not the obligation, to cancel and terminate this Lease immediately by providing Landlord with written notice of such termination, and upon such Expiration Date, the Lease shall be deemed null, void and of no force and effect, and that both parties shall be relieved of performing any further obligation under the terms of the Lease, but shall not be relieved of liability for any additional remedy available to Tenant. In the event of a Landlord default, Tenant shall also have the right, but not the obligation, to

pursue any other remedy available to Tenant at law or in equity, including but not limited to specific performance, offset, deduction and abatement. Tenant's remedies under this Section 15.03 shall be cumulative and not mutually exclusive.

## **ARTICLE XVI**

### **Interpretation, Notices, Miscellaneous**

#### **Section 16.01. Interpretation.**

a. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

b. The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

c. This Lease may be executed in several counterparts; but the counterparts shall constitute but one and the same instrument.

d. This agreement shall be interpreted in accordance with the internal laws of the State of Kansas without giving effect to conflict of laws principles.

e. This Lease shall not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.

Section 16.02. **No Oral Changes.** This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or terminated orally.

Section 16.03. **Communications.** No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, postage prepaid, addressed as follows:

a. If intended for Landlord, a written communication shall be effective if mailed to the address designated as Landlord's Notice Address in Article I or to such other address as Landlord designates by giving notice to Tenant; and

b. If intended for Tenant, a written communication shall be effective if mailed to the address designated as Tenant's Notice Address in Article I or to such other address as Tenant shall designate by giving notice thereof to Landlord.

Section 16.04. **Successors and Assigns.** Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

Section 16.05. Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Lease is of the essence of this Lease.

Section 16.06. Assignment; Sublease. Tenant may freely assign or sublease all or any portion of the Premises without Landlord's consent. To the extent Tenant assigns any portion of the Premises or its interest in this Lease, Tenant may request Landlord's consent that as of the date of such assignment, the assignor shall be relieved of all its obligations pursuant to this Lease arising on and after the date of such assignment, and such assignment shall act as a novation of such obligations of the assignor, and Landlord agrees to not unreasonably withhold, condition or delay such consent. Landlord shall be obligated to provide such consent if both: (1) the proposed assignee expressly assumes and agrees to perform all of the obligations of Tenant under this Lease arising as of the date of such assignment, and (2) Tenant furnishes the City with evidence in the form of financial statements, accompanied by the certificate of an independent certified public accountant, establishing that the net worth of such proposed assignee immediately following such assignment will be at least equal to the net worth of Tenant as shown by the most recent financial statement of Tenant.

Section 16.07. Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of the Lease.

Section 16.08. Other Definitions. For purposes of this Lease, the following definitions shall be applicable to the various provisions of this Lease:

**"Gross Revenues"** means all revenues, business interruption insurance proceeds, receipts and income of any kind derived directly or indirectly by the Tenant from or in connection with the Tenant Improvements (including rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts), whether on a cash basis or credit, paid or collected, determined in accordance with sound accounting principles, excluding, however: (i) funds furnished by the Tenant, (ii) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (iii) gratuities, (iv) proceeds of insurance and condemnation (except as stated above or expressly provided elsewhere), and (v) sale or disposition proceeds of the Tenant or the Tenant Improvements.

**"Total Expenses"** means all expenses reasonably incurred by the Tenant or Manager in the operation and maintenance of the Tenant Improvements as determined in accordance with sound accounting principles, including but not limited to.

- salaries and employee expense and taxes (including reasonable salaries, wages, bonuses and other compensation at all employees of the Tenant and their social benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits);
- expenditures for ordinary and non-structural repairs and maintenance necessary to maintain the Tenant Improvements in good operating condition;



- expenditures for operational supplies, utilities, insurance, governmental fees and assessments;
- the cost of inventories and fixed asset supplies, and license fees;
- franchise fees and other fees, expenses, and charges under a franchise agreement, if any;
- expenditures for advertising and marketing;
- federal, state and municipal excise, sales and use taxes, except those collected directly from guests and patrons or as part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments;
- amounts paid into any capital, furniture, fixture, equipment or other reserve, excluding, however, insurance proceeds and condemnation awards;
- fees paid to the Manager;
- ad valorem taxes and personal property taxes and special assessments to be paid by the Tenant;
- the cost of insurance to be provided by the Tenant;
- amounts paid for operating and capital leases for furniture and equipment;
- payments of debt service to the Leasehold Mortgage or other creditors and other loans to the Tenant;
- Tenant Development Cost Return, defined as, on an annual basis, twenty percent (20%) of the total Construction Costs paid by Tenant, Developer, or permitted assignees and sublessees.

Excluding, however: (i) capital expenditures by the Tenant, (ii) amortization expense, (iii) depreciation expense.

No part of Manager's central office overhead or general or administrative expense (as compared to that of the Tenant Improvements) shall be deemed to be a part of Total Expenses. Out-of-pocket expenses of Manager incurred for the account of or in connection with the Tenant Improvements operations, including reasonable travel expenses of employees, officers and other representatives and consultants of Manager and its affiliates, shall be deemed to be a part of Total Expenses and such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this WaterWalk Ground Lease No. \_\_\_\_\_ instrument the date first above written.

CITY OF WICHITA, KANSAS

WATERWALK LLC

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Landlord”

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Tenant”

Attest:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: City Clerk

Approved As To Form:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: City Attorney

Exhibit “A” to Exhibit 6

**PREMISES**

[insert legal yet]

**Form of  
SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT ("Subordination Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, by and among [insert name and address of applicable Leasehold Mortgagee] ("Lender"), [insert name and address of Tenant] ("Tenant"), and [insert name and address of Landlord] ("Landlord").

W I T N E S S E T H:

WHEREAS, pursuant to that certain WaterWalk Ground Lease dated as of \_\_\_\_\_, 20\_\_\_\_ (together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the "Lease"), with respect to the real property legally described in the Lease (the "Demised Premises"), Tenant leases the Demised Premises;

WHEREAS, Lender has made, or may agree to make, a loan to Tenant (the "Loan") conditioned on, among other conditions, the full execution of this Subordination Agreement;

WHEREAS, the Loan will or may be secured by, among other things, a mortgage, assignment of the Lease and rents, and/or a security agreement (collectively the "Mortgage") made by Tenant to or for the benefit of Lender covering, among other things, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed on the Demised Premises;

WHEREAS, the parties hereto desire to make the Landlord's fee interest in the Demised Premises subject and subordinate to the Mortgage, pursuant to the terms hereof.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Provided that the Loan proceeds are used for any costs associated with the development and construction of improvements by Tenant on the Demised Premises, the Landlord's fee interest in the Demised Premises, and any right, title and interest of Landlord in and to the improvements thereon, are and shall be subject and subordinate to the Mortgage and the lien thereof, to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, but only until the "Expiration Date" of the "Term" of the Lease (as those terms are defined under the Lease); provided, however, and Lender agrees, that in the event of any act, omission or default by Tenant that would give Lender the right, either immediately or after the lapse of a period of time, to declare a default or breach under the Mortgage and elect one or more remedies, including but not limited to foreclosure of the Mortgage, Lender

will not exercise any such right until it has given written notice of such act, omission or default to Landlord and provided Landlord the right to cure for any applicable cure period set forth in the Mortgage.

2. The terms and provisions of Article X of the Lease are incorporated by reference herein for the purpose of the parties confirming to each other that each shall have the rights and obligations set forth in said Article X of Landlord as “Landlord” thereunder, Tenant as “Tenant” thereunder, and Lender as “Leasehold Mortgagee” thereunder, as if Lender was an actual party to the Lease.

3. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Subordination Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender: [insert notice address]

with a copy concurrently to: [insert notice address]

To Tenant: [insert notice address]

with a copy concurrently to: [insert notice address]

To Landlord: [insert notice address]

with a copy concurrently to: [insert notice address]

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such notice is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent.

4. This Subordination Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination Agreement as of the day and year first above written.

“Lender”

\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

“Tenant”

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

“Landlord”

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledgments

STATE OF \_\_\_\_\_ )  
 ) SS

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

**GENERAL WARRANTY DEED**

THIS INDENTURE is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between The City of Wichita, a corporate body politic and political subdivision of the State of Kansas ("Grantor"), and \_\_\_\_\_, whose respective interest is identified below ("Grantee").

**W I T N E S S E T H**: That;

Grantor, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby distribute, grant, sell and convey all the following described real estate, situated in the County of Sedgwick and State of Kansas:

[INSERT LEGAL DESCRIPTION]

to Grantee for a term of \_\_\_\_ years. Grantee, subject to easements and other restrictions and reservations of record, shall have all right, title and interest, including the right to control the use of such real estate, the right to all rents, issues and profits therefrom, and the full power and authority to execute lease agreements for the lease or rental of such real estate, for such terms and upon such conditions as Grantee, in its uncontrolled and absolute discretion, shall determine to be in the best interests of the term-of-years estate, without the necessity of the Grantor, as the remainder person, joining therein. At and upon the expiration of the term-of-years estate, the real estate shall revert outright back to the Grantor and its assigns forever.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, and appurtenances hereunto belonging or in anywise appertaining forever.

And Grantor for itself and for its successors and assigns does hereby covenant, promise, and agree to and with Grantee, that at the delivery of these presents it is lawfully seized, of an absolute and indefeasible state of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of whatsoever nature and kind, except as stated above, and that Grantor will warrant and forever defend the same unto Grantee, its successors or assigns, against Grantor, its successors and assigns, and all and every person or persons whomsoever lawfully claiming or to claim the same.

The City of Wichita

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SEDGWICK    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, on behalf of the City of Wichita for the uses and purposes contained therein.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_

Exhibit "D" to Exhibit 6

**Form of  
LESSOR ESTOPPEL CERTIFICATE**

The City of Wichita, Kansas, a Kansas municipality ("Ground Lessor"), and WaterWalk LLC, a Kansas limited liability company ("Ground Lessee"), executed that certain WaterWalk Ground Lease dated as of \_\_\_\_\_, 20\_\_ (such Lease together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the "Ground Lease"), with respect to the real property legally described in the Ground Lease (the "Land").

[insert paragraph describing who is requesting the estoppel certificate and why]

Ground Lessor hereby certifies, acknowledges and agrees as follows [to the extent any of the following statements are not true, Ground Lessor will revise such statement, providing specific information as to why the statement is not true]:

1. The Ground Lease is in full force and effect and is valid and enforceable against Ground Lessor, and in any event, Ground Lessor acknowledges and agrees that it will not assert that either (a) a Ground Lessee default under the Ground Lease has occurred prior to the Effective Date, or (b) prior to the Effective Date an event occurred or condition existed which, with the giving of notice or the lapse of time or both, would constitute a default of Ground Lessee under the Ground Lease.

2. Ground Lessor agrees to send to \_\_\_\_\_ all notices to which \_\_\_\_\_ is entitled pursuant to Article X of the Ground Lease, at the following address: \_\_\_\_\_.

3. Ground Lessor acknowledges that it is executing and delivering this Certificate for the benefit of \_\_\_\_\_, any persons or entities acquiring all or any portion of \_\_\_\_\_'s interest in the \_\_\_\_\_, and each of their respective lenders, and any title insurance company providing title insurance to any of such persons, entities, or lenders, together with each of their respective successors and assigns, knowing that each of such persons and entities will rely upon the contents hereof.

Dated as of \_\_\_\_\_, \_\_\_\_\_.

CITY OF WICHITA, KANSAS

\_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF SEDGWICK            )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said county and state, came \_\_\_\_\_, the \_\_\_\_\_ of the City of Wichita, a Kansas municipality, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_